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PACIFIC  TELESIS
Group - Washington

CONFIDENTIAL

August 9, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M St., NW Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: CC Docket No. 94-65

On behalf of Pacific Bell, please find enclosed an original and six copies of its *Opposition* in the above-referenced proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

1994 ANNUAL ACCESS TARIFF FILINGS

CC Docket No. 94-65

OPPOSITION OF PACIFIC BELL

Pacific Bell opposes AT&T's Application for Review ("AFR") filed on July 25, 1994. The AFR seeks review of the Common Carrier Bureau's Order in the 1994 Annual Access Tariff Filing proceeding which denied local exchange carriers ("LECs") an exogenous cost reduction for equal access and network reconfiguration ("EANR") amortized costs.¹ The AFR should be denied as an impermissible attempt to revise the price cap rules for exogenous cost treatment without a rulemaking.

¹ 1994 Annual Access Tariff, CC Dkt. No. 94-65, Memorandum Opinion and Order, DA 94-706, released June 24, 1994, paras. 45-56. ("June 24 Order").

The exogenous treatment of EANR amortized costs was directly rejected by the Commission in the LEC Price Cap Reconsideration Order.²

The Commission's existing rules specifically limit the permitted cost changes to those listed in §61.45(d) which does not permit exogenous treatment of EANR costs. At the time that §61.45 was promulgated the Commission knew that EANR costs were to be amortized for a limited period of time. The Commission did not provide for exogenous treatment of the amortized costs. Instead, the Commission chose to exclude EANR costs from exogenous treatment.

AT&T explains the Commission's express rejection of the reconsideration request to treat EANR amortized costs as exogenous as the result of insufficient evidence of the costs which would be incurred in the years remaining in the amortization period. A close reading of the Commission's decision, however, shows that a "meager factual record" was not the basis for denying EANR costs exogenous treatment.³

² Policies and Rules Concerning Rates of Dominant Carriers, 5 FCC Rcd. 6786 (1990) ("LEC Price Cap Order"); on recon, 6 FCC Rcd. 2637 (1991) ("LEC Price Cap Reconsideration Order"), n.77.

³ AFR, p. 9.

Instead, the Commission chose not to change the rules governing eligibility for exogenous cost treatment. In other words, the Commission rejected the theory advanced by AT&T that the level of cost should determine cost recovery.

Thus, contrary to AT&T's assertion,⁴ the Bureau's denial of AT&T's Petition for Reconsideration in this proceeding is consistent with the Commission's explanation that exogenous treatment for EANR amortized costs would be a substantive change to the price cap rules and beyond the scope of this proceeding. Permitting exogenous treatment of costs based on a LEC's cost level would be a return to rate of return regulation and thus a substantive change in the Commission's price cap rules.

AT&T itself recognizes that the action it urges amounts to a change in the Commission's rules. AT&T has raised the same issue by its Comments in response to the Notice of Proposed Rulemaking in CC Dkt. No. 94-1 which is a comprehensive review of the Price Cap regulations.⁵ The

⁴ AFR, p. 10.

⁵ Price Cap Performance Review for Local Exchange Carrier, CC Dkt. No. 94-1, Notice of Proposed Rulemaking, released February 16, 1994; Comments of AT&T, dated May 9, 1994, pp. 45-52.

annual access tariff filing is not a proceeding in which rule changes may be made.

The Commission should deny AT&T's Application for Review both as substantively and procedurally improper.

Respectfully submitted,

PACIFIC BELL

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Date: August 9, 1994

CERTIFICATE OF SERVICE

I, Marcia Kwan, hereby certify that copies of the foregoing "OPPOSITIONS OF PACIFIC BELL TO AT&T'S APPLICATION FOR REVIEW" re the 1994 Annual Access Tariff Order released June 24, 1994 by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list this 9th day of August 1994.

By: Marcia Kwan
Marcia Kwan

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